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PRINCIPAL MATTERS.

AMENDMENT.

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1. An amended answer, changing the defence from a contract of *lease* to one of *sale*, may be filed when it is in accordance with the principles settled by the court, in remanding the case for new proceedings.
Bissel et ux. vs. *Erwin's Heirs*, 143

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3. In an action for damages, for slanderous words spoken and uttered publicly, by the defendant, concerning the plaintiff, the latter may amend his petition by adding an allegation of the *falsity* of the charges, and *malice* on the part of the defendant in making them; but he must pay all the costs up to the time of the amendment.....*Mitreaud* vs. *Delassize*, 416

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8. No appeal lies from an order of court, recognizing a creditor of an insolvent, to be a *mortgage creditor*, and paid by preference as such.
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M'Coy's Executors vs. *Pritchard et al.*, 428

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13. The appellant must offer to the judge *a quo*, a good and sufficient surety, who is bound to receive the security offered; but if he is shown to be insufficient, the condition has not been complied with through the fault of the appellant, and the appellee is entitled to his execution..... *ib.*

14. So, if the surety in a suspensive appeal bond is shown to be insufficient, the appellee may have his execution immediately..... *ib.*

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ARREST AND HOLDING TO BAIL.

1. Where a non-resident is held to bail, but leaves the state before *service* of the petition is made on him, the suit will be dismissed.
Slocomb et al. vs *Bowie*, 10

2. In the oath or affidavit for the arrest of a debtor, the affiant must swear from his *personal* and direct *knowledge*, that the debt is due and unpaid, and not from what he may have learned from others.
Park vs. *Pyne et al.*, 212

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3. The agent of the creditor must swear to the indebtedness of the defendant from personal and direct knowledge, to obtain an order of arrest, and not from what he may have heard from any other person whatever.
Sandford et al. vs. *Pyne et al.*, 303

4. A debtor who is about to absent himself from the state, even for a limited time, may be held to bail, if he leaves no property in the state.
Roberts et al. vs. *Page*, 452

5. So, where the defendant was captain of a steam-boat, trading to Havana, was about leaving on a regular voyage, to return immediately: *Held*, that he was liable to arrest at the suit of a creditor, when it was not shown that he owned or possessed any property..... *ib.*

ATTACHMENT.

1. Where the endorser sues the maker of a note not yet due, it is not a proper case for attachment, as he does not show an existing debt due to him by the defendant, nor an absolute liability incurred as surety.
Taylor vs. *Drane*, 62

2. Where an attaching creditor swears, that the sum of two thousand three hundred and fifty dollars, *besides interest*, *damages*, &c. is due and owing to him, he will be required only to give bond for an amount exceeding by one half the *principal sum due*, disregarding the interest and damages, as too indefinite.....*Pope et al.* vs. *Hunter*, 306

3. Where the petition claims a larger sum, by annexing a fixed rate of damages and interest, than that sworn to in the affidavit, on which the attachment had been obtained, it does not vitiate the attachment..... *ib.*

4. The affidavit necessary to obtain an attachment for a debt *not due*, must be special, according to the act of 1826; and the creditor, or his agent must swear, that the debtor is about to remove his property out of the state before the debt becomes due.....*Crooke et al.* vs. *Rutherford and Metcalf*, 479

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1. An additional sum for the fee of the attorney of an estate will not be allowed, when there is no evidence of the nature and value of the services for which it is claimed. It is not sufficient to urge that the sum claimed is a moderate fee.....*Clague's Widow* vs. *Clague's Executors*, 1

2. An attorney or *curator ad hoc*, appointed to represent an absent defendant, has no capacity or authority to waive prospectively in behalf of his client the production of legal evidence, and he cannot bind him by agreeing to dispense with the forms required by law in taking evidence.
Edmondson vs. *Mississippi and Alabama Rail Road Company*, 282

3. The authority of an attorney at law extends to all the means necessary to protect and promote the interest of his client, so far as they are affected by the proceedings in court; but he cannot enter into an agreement with the members of the bar not to try causes for a certain time, which

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would be binding on his client and preclude him from having his cause set for trial by employing other counsel.

Robert & Williams vs. *Commercial Bank*, 528

4. An agreement among counsel that they will not try causes during the summer and early fall months, is not *legally binding* on the parties to it. If a cause is afterwards set for trial by the original counsel at the instance of the client, the court will disregard his general promise, and allow him to proceed..... *ib.*

AUCTIONEERS.

1. Auctioneers are public officers, and in making public sales, are bound to have from the seller or owner of the property the terms and conditions in writing, which they are to proclaim in a loud and audible voice to the by-standers, and to offer the property publicly for sale.

Baham vs. *Bach*, 287

2. From the time the auctioneer declares the highest bidder to be the purchaser, and the thing sold is adjudicated to him, the contract is subjected to the same rules which govern the ordinary contract of sale.. .... *ib.*

3. Combination at auction sales to enhance the price by false bids, or depress it by false assertions, are artifices which invalidate the contract, when practised by those who are parties to it..... *ib.*

4. The owner of property may withdraw it before the highest bid is accepted by the auctioneer, but he has no right to bid himself, unless he publicly reserves this right; still less can he bid through the auctioneer..... *ib.*

5. So, where the price of property was limited, which fact was not communicated to the bidders, and the auctioneer advanced on the bid until it reached the limits prescribed by the owner, and was adjudicated to the defendant: *Held*, that the sale was null and void, even as to the purchaser. *ib.*

BILLS AND NOTES.

1. The possession of a promissory note, endorsed in blank, is *prima facia* evidence of property sufficient to throw the burden of proof on the defendant; and when the signature is not denied, the plaintiff is not bound to make proof of it.....*Burns* vs. *Haynes et. al.*, 12

2. The certificate of protest of the notary is required to make mention of the demand and of the manner of *making it*, and is evidence of the matters it contains; but is *not evidence* of the acknowledgment of the party to pay the debt in a particular description of notes.

Maccoun vs. *Atchafalaya Bank*, 342

3. An endorser cannot attach property of the maker of a note not yet due, on the ground that he endorsed as surety, and that the latter is about to remove with his property permanently from the state before the note becomes due.....*Taylor* vs. *Drane*, 62

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him of his plea of failure of consideration. He has a right to interrogate the plaintiff on oath if he is the true owner, and to have the case remanded for this purpose, if it has been refused.....*Phillips* vs. *Carr*, 71

5. Where defendant sets up an equitable defence to his note, and charges fraud in the transfer of it to the plaintiff, to deprive him of his defence, the burden of proof of consideration, and that he came fairly by it, rests on the latter. The *form* of transfer makes no difference, whether by blank or special endorsement.....*Morgan* vs. *Yarborough*, 74

6. Where an order or draft is drawn upon a general or particular fund, *for part only*, it does not amount to an *assignment* of that part unless the drawee consents to the appropriation by the acceptance of the draft.
Poydras vs. *Delamare et. al.*, 98

7. In an action for the recovery of a lost note, when the fact of the loss is proved, the defendant must show that he came in possession of it in the regular course of trade, and that he acquired it in good faith and for a valuable consideration.....*Nicholson, tutor, &c.* vs. *Patton*, 213

8. When a note is taken by a broker under circumstances affording reasonable grounds of suspicion, he should inquire if the party came by it honestly; and if he takes it under these circumstances, with a view to his profit, it is at his own risk..... *ib.*

9. The plaintiff may strike out his own endorsement on the bill at the trial.....*Banks* vs. *Brander et. al.*, 274

10. The acceptor of a bill is bound absolutely, and the holder is not required to sue the drawer or endorsers..... *ib.*

11. Bills of exchange, payable *after date*, are not required to be presented for acceptance, as between the holder and endorsers; it is only necessary to have bills payable *after sight* presented for acceptance to give them a date.
Crosby vs. *Morton et. al.*, 357

12. Endorsements made by a partnership on a bill of exchange, bearing date about three weeks before the dissolution of the firm, will be presumed to have been made during the continuance of the partnership..... *ib.*

13. Where certain notes payable at the "Branch of the United States Bank at Natchez," are protested by a notary residing at Natchez, who states in his protest that he demanded payment at the "United States Bank," it will be considered as meaning the branch at Natchez, and not the principal bank at Philadelphia.....*Thatcher* vs. *Goff et. al.*, 360

14. The holder of a note endorsed in blank, may institute suit in his own name, whether he be the true owner, or the note has been put into his hands for collection.....*Boswell* vs. *Zender*, 366

15. A note endorsed in blank cannot be distinguished from one payable to bearer, which may be put in suit by any one in possession, when there are no allegations that it was lost or stolen, or that the possessor came by it unfairly..... *ib.*

16. Where an endorser of a bill has not received notice of protest, but

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afterwards acknowledges the bond and promises to pay, with full knowledge of the irregularity and want of notice, he will be held liable.
Bank of the United States vs. *Ellis*, 368

17. An acceptance for accommodation of the drawers of a bill of exchange is essentially a credit given to them, and they cannot be made liable to the suit of the acceptors before maturity or payment of the bill.
Groning et. al. vs. *W. & L. Krumbhaar*, 402

18. The obligation of a drawer of a bill is fixed by the non-acceptance, protest and notice; and it is immaterial whether any demand and protest for non-payment was made or not.....*Williams* vs. *Robinson*, 419

19. A subsequent promise to pay a bill or note, or a part payment thereof, must be made with a full knowledge of the fact of a want of due diligence on the part of the holder in giving notice of protest to the parties, in order to be binding; but affirmative proof of this knowledge is not required. It may be inferred from circumstances..... *ib.*

20. Bank notes when presented at the bank and payment is refused, become mere evidence of debt, fluctuating in value according to the credit of the bank, and are fit objects of trade and commerce. Trading in them is not putting them in circulation *anew*, so as to do away with the original demand and the effect of non-payment..... *ib.*

21. Damages allowed on the return of protested bills, *include all charges*, such as premium, cost of protest and postage. The holder cannot claim the *difference of exchange*, but he is entitled to *interest* on the damages from the date of protest.....*Robert & Williams* vs. *Commercial Bank*, 528

CARRIERS.

1. Steamboats carrying passengers for hire should be furnished with whatever is requisite or usual for the safety of those on board.
Lobdell vs. *Bullitt*, 348

2. So, where a steam-boat was destitute of a yawl and of ropes to throw to the assistance of persons falling overboard: *Held*, that the owner is liable for the value of a slave of one of the passengers, who fell overboard and was drowned; the officers and crew using no exertions to save him..... *ib.*

3. Partnerships or unincorporated companies for the purchase and sale of personal property, and for carrying it for hire in ships or other vessels, are commercial partnerships, and the stockholders are bound *in solido* for the debts of the company.....*Vigers et. al.* vs. *Sainet*, 300

4. Owners of steam-boats carrying freight and passengers are commercial partners; and in liquidating the partnership affairs, when some of the partners are insolvent, the other partner cannot withdraw his share of the proceeds of the sale of their steam-boat until the partnership debts are first paid.....*Claiborne et. al.* vs. *Their Creditors*, 279

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CITATION.

1. An informality in the citation, and an order of court requiring a new one, does not operate a discontinuance, so as to require payment of costs by the plaintiff before the case proceeds.....*Lapice* vs. *Smith*, 91

CIVIL LAW.

1. The repeal of the Roman, Spanish and French civil laws, in the article 3521 of the Louisiana Code, and the repealing act of 1828, only embraces the positive, written or statute laws of those nations and of this state, such as were introductory of a new rule; and did not abrogate the established *principles* of law settled by the decisions of courts of justice.

Reynolds vs. *Swain et al.*, 193

2. The principles settled in the case of *Christy* vs. *Cazanave*, 2 *Martin, N. S.*, 451, making tenants who abandon their leases *liable at once*, for the rent of the whole term, although drawn from the Roman civil laws, which have no intrinsic authority here, yet the reason of them has great cogency in the elucidation of principles applicable to analogous cases..... *ib.*

CODES.

1. The Louisiana Code contains definitions and points of doctrine, as well as positive legislation; and whenever there is any inconsistency in its provisions, the court will disregard the doctrine, and consider the definitions modified by the clear meaning of the positive enactments.

Ellis vs. *Prevost et al.*, 230

2. The Code of Practice was framed exclusively with a view to judicial proceedings, and its provisions on the subject of general laws do not necessarily repeal those of the Louisiana Code, that are contrary to or inconsistent with them.....*Same Case*, 237

COMMISSIONERS FOR OPENING STREETS.

SEE CORPORATION OF NEW-ORLEANS.

COMPENSATION.

1. Compensation may be pleaded at every stage of the proceedings and *on the trial*, if it be pleaded specially.....*Downing* vs. *Delassize*, 256

CONFLICT OF LAWS.

1. An obligation executed here, and made payable in Mississippi, will be governed by the laws of that state regulating the rate and payment of interest accruing after maturity.....*Lapice* vs. *Smith*, 91

2. A statute of another state, authenticated by the great seal and the certificate of the secretary of state, is admissible in evidence here, as the law of that state..... *ib.*

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3. The power of the husband over the wife, and her capacity to sue, ratify or make a contract, is fixed by the law of their domicil.

Garnier vs. *Poydras*, 177

4. So, where the wife resides in France, and is separated in bed and board from her husband, in order to sue and enforce her legal rights in Louisiana, she must be *authorized* according to the laws of France to institute suit..... *ib.*

5. Where a debtor absconded from his creditors in France, came to Louisiana, and soon after died, where his succession was opened and administered: *Held*, that no other domicil but his original one in France, can be assigned him, as he manifested no intention of establishing himself here.

Gravillon vs. *Richard's Executor*, 293

6. The power of our courts to order the remission of funds belonging to a foreign succession opened here, to the representatives of, and creditors authorized to receive them, by the courts of the domicil of the deceased is undoubted, and every motive of public policy requires such transmission for distribution..... *ib.*

CONTRACTS.

1. In commutative contracts, it is the duty of the party claiming damages for non-performance to show that he offered to perform his part at the time implied in the contract, and that he has put the adverse party in default. This is a pre-requisite to the recovery of damages.

Vance vs. *Tourné & Beckwith*, 225

2. The damages occasioned at the time of the default or breach of the contract, are the only damages that can be recovered..... *ib.*

3. In an action by the vendee for a breach of contract of sale by the vendor in not delivering the article, the measure of damages is *the price* of the article *at the time* of the breach of the contract. 3 *Wheaton*, 200.

Shepherd et al. vs. *Hampton*, *ib.*

4. In a contract of sale of a plantation and slaves, in which the vendee paid four thousand five hundred dollars in cash, and on the vendor's stipulating to make a title, the 1st of January following the balance was to be paid, but on failure of the vendee to comply, the sum paid was to be forfeited to the vendor to indemnify him for the chances of a better sale: *Held*, that the contract was absolute, but no more than the sum paid could be exacted from the vendee on his failure to pay the price, and that the sum paid was forfeited .....*Noe* vs. *Taylor*, 249

5. When the resolutory condition in a contract depends on the will of either party, the contract is not dissolved of right by the happening of the condition, but its dissolution must be sued for in all cases when it embraces immoveable property .... *ib.*

6. Good faith in a contract is always presumed, and the court will consider itself bound to believe the contracting parties understood each other, and that the vendor disclosed the truth in relation to the thing sold, when it is not otherwise shown ..... *ib.*

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7. The acceptance of a contract need not be expressed in the instrument, or signed by the party. It results from his acts in availing himself of the stipulations in the contract .....*Amory et al.* vs. *Black*, 264

8. Although parole evidence is not admissible to prove a written contract, yet it will be received to prove acts done by the parties in execution of it ..... *ib.*

9. Where an architect enters into a written contract in a penalty, to erect a block of brick stores and dwellings *within three months after the granite is put up*, and with a knowledge of a contract between the owner and another person to put up the granite: *Held*, that the epoch when the last granite sills were set is to be considered the time when the three months began to run, and not when the basement story was completed. *Gallier* vs. *Jonau, f. m. c.*, 309

10. The putting up of the granite windows and doors cannot be excluded from the contract, but must be considered part of it, when not expressly reserved by the parties..... *ib.*

11. Where the defendant gave up the practice of law in New-Orleans, and entered into a contract with the plaintiff, by which he removed to East Baton Rouge and took upon him the cultivation of an estate and plantation, in conjunction with the plaintiff's son: on a disagreement between the parties the contract was dissolved, and the plaintiff sued to recover possession of the estate: *Held*, that the defendant cannot recover damages for the *loss of his practice* in New-Orleans, as for *a breach* of the contract. His absence was not the consequence of a breach of the contract by the plaintiff, but of the contract itself ..... *Williams* vs. *Barton*, 404

12. Damages for a breach of contract are those which are incidental to and caused by the breach, and may reasonably be supposed to have entered into the contemplation of the parties at the time of making it ..... *ib.*

13. In reciprocal contracts, he who desires to comply when the other delays, must at the proper time, offer to perform his part, to put the other in default .....*Oxnard* vs. *Locke et al.*, 447

14. Joint purchasers cannot be condemned *in solido* for the payment of the price..... *ib.*

15. A party performing his part of a contract in good faith will be allowed the full value of his performance, and such damages as he may sustain by a breach of the contract by the adverse party. *Bach* vs. *Lafayette City Council*, 549

16. A party must be put in default before damages can be claimed for the non-compliance of reciprocal obligations. *Armstrongs* vs. *Baldwin, Syndic, &c.*, 564

17. Where a contract grows out of, and is connected with an illegal or immoral act, or is in part only connected with the illegal consideration, and growing immediately out of it, though it be a new contract, it is equally

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tainted, and a court of justice will not lend its aid to enforce it. 11 *Wheaton*, 258..... *Hernandez et al.* vs. *Babcock's Executors*, 587

CORPORATION.

1. To enforce the forfeiture of the charter of a corporation, proceedings must be instituted to that effect by the state; and unless the power of instituting such proceedings be expressly delegated by law, *the state alone possesses it;* and having the power, may forbear to exercise it and waive the forfeiture..... *Atchafalaya Bank* vs. *Dawson*, 497

2. A charter granted by the state, does not become absolutely null, by the inexecution of the condition annexed to it. A cause of forfeiture cannot be taken advantage of, or enforced against a corporation incidentally, or in any other mode, than by a direct proceeding *instituted by the government;* because it may waive a broken condition of a contract or charter, as well as an individual..... *ib.*

3. The clause in the bank charters of this state, which declares that in case of a suspension of specie payments for more than ninety days, "the charter shall be *ipso facto* forfeited and void," gives to the state the right to claim the forfeiture, in an action instituted for that purpose; and although the bank may have forfeited its corporate life, it continued to exist as long as the state did not claim the forfeiture..... *ib.*

4. *Martin, J.*—The legislature possessed the power to remit any forfeiture that resulted to the bank charters, by the suspension of specie payments; and the exercise of that power in the act for the "relief of the banks," approved March 14, 1839, relieves them from all penalties incurred by the non-payment of specie..... *ib.*

CORPORATION OF NEW-ORLEANS.

1. The property owned by the corporation of New-Orleans, at the time of its division into municipalities, belongs to the municipality in which it is situated; but the proceeds of all sales, claims for money, rights and credits, due to it at that time, can only be claimed and sued for by the mayor and commissioners of the sinking fund..... *Municipality No. One* vs. *Barnett*, 344

2. So, where certain lots, situated in the first municipality, were sold by the corporation to the defendant, before the division of the city, but the terms of the sale not being fully complied with, or payment made, this municipality cannot maintain an action for the rescission of the sale and get back the property. This right can only be exercised by the mayor and commissioners..... *ib.*

3. The town of Milneburg, on the margin of Lake Pontchartrain, is considered to lie within the incorporated limits of the city of New-Orleans, and subject to the operation of the city ordinances and police regulations. *Milne* vs. *Mayor et al.*,, 68

4. Where the act of incorporation does not expressly include the inhabitants of a certain place within the city limits, yet if they considered themselves residents within them, and enjoyed the rights of the other corporators for a long time, this will be adopted as a practical interpretation of the law as embracing and subjecting them to the police regulations. *ib.*

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5. The commissioners appointed under the act of 1832, for opening and widening streets in New-Orleans, are made the sole judges of the cases in which improvements are of so general a nature as to require payment of the expenses by the whole community, or only by the owners of property in the immediate vicinity, who are specially benefited by the improvement.
Blanchet vs. *Municipality No. Two*, 322

6. The courts are open to any abuses of the commissioners, but the party aggrieved must administer proof of the injury he complains of..... *ib.*

7. The sale of the part of the open space or *quai*, in front of Old Levee street, was sold as *public* property, and has been lawfully alienated by the assent of the sovereign authority; for the disposition of the proceeds of the sale, in being made part of the sinking fund of the city, by an act of the legislature, is equivalent to an original authority on the part of the state to make the alienation.....*Mayor et al.* vs. *Hopkins et al.*, 326

8. The public space or *quai*, is, by the plan of the city, appropriated to the use of the public, and having been ever occupied as such, is a *public place*, *hors de commerce*, and cannot be claimed by an individual in a civil action..... *ib.*

9. The destination of this space as a *public place*, was made by the sovereign power, and the right to alienate or to make a change in it, whenever the public interest requires it to be done, is vested in the sovereign power, and to this the rights of front proprietors are subordinate..... *ib.*

10. Front proprietors of lots cannot prevent the sovereign authority of the state from alienating the vacant space in their front, designated as a public place, or *quai*, when the public *interest* requires it: their rights are subordinate..... .....*Mayor et al.* vs. *Leverich et al.*, 2 *cases*, 332

11. The sovereign authority in a state, can authorize the alienation of a public *place*, destined for public use, when from the nature of its destination, the public interest requires it..... *ib.*

12. The mayor of New-Orleans, who is entrusted with the execution of the laws for the benefit of all the corporators, has the capacity to sue and prohibit by suit, the passage or execution, by any of the municipal councils, ordinances or resolutions, contrary to the charter, and to test their legality by suit.....*Genois, Mayor, etc.* vs. *Lockett et al.*, 545

13. So, the mayor may maintain an action to prohibit and restrain the officers of any of the municipalities, from doing any acts contrary to the laws of the state, and in violation of the city charter..... *ib.*

COURTS.—SEE JURISDICTION.

CURATOR.

1. Where two persons, whose pretensions are about equal, claim to be

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appointed curator of a vacant estate, the one first applying will be preferred, unless the one opposing alleges and shows a better right.

Brugier vs. *Biron*, 77

DAMAGES.

1. A judgment creditor is liable in damages in an action for the false imprisonment of his debtor on a *ca. sa.*, if the writ issues *illegally;* but where no malice is shown, and the party might have been easily mistaken in taking out his writ, if considerable damages are given, the court will grant a new trial.....*Escurix* vs. *Daboval*, 87

2. So where the creditor, without malice shown, took out his *ca. sa.* on advice of his counsel and imprisoned his debtor for twenty days, and the jury gave three thousand dollars in damages for false imprisonment, the court ordered a new trial, and said, "had there been a plea of prescription on the part of the defendant, it would have been noticed; and without expressing an opinion as to its effect, suggest that it be filed before the next trial..... *ib.*

3. In commutative contracts, it is an indispensable pre-requisite for the party claiming *damages* for *non-performance*, to show that he has performed his part of the contract, and that he has put the adverse party in default.

Vance vs. *Tourné & Beckwith*, 225

4. In an action for damages by the vendee for a breach of the contract on the part of the vendor, in failing to deliver the article, *its price or value* at the time of the breach is the measure of damages. 3 *Wheaton*, 200.

Shepherd et. al. vs. *Hampton. ib.*

5. In cases where it is difficult to assess the damages sustained by the party complaining, those given by the jury, even *when high*, will be sanctioned, rather than expose the parties to the expense and vexation of further litigation.....*Loney* vs. *High*, 271

6. So if a party, in building a wall or house contiguous to his neighbor, by which he demolishes his building and rebuilds his walls, he is bound to exercise due care and attention, and for any neglect, he is liable to the adverse party in damages..... *ib.*

7. Damages for the breach of contract are those which are incidental to and caused by the breach, and may reasonably be supposed to have entered into the contemplation of the parties at the time of making the contract.

Williams vs. *Barton*, 404

8. In an action for damages for slanderous words spoken and uttered publicly of and concerning the plaintiff, the latter may amend, and insert an allegation of the falsity of the charges and malice on the part of the defendant.....*Mitreaud* vs. *Delassize*, 416

9. According to the article 907, of the Code of Practice, the Supreme Court is empowered to condemn the appellant to pay damages for a frivolous appeal, if the appellee claims them, but they cannot exceed ten per cent. on the amount in dispute, including interest.

M'Coy's Executors vs. *Pritchard et. al.* 428

10. So where the judgment bears five per cent. interest, the damages cannot exceed five per cent..... *ib.*

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11. Damages as for a frivolous appeal, will be given when the points relied on by the appellant are untenable and frivolous.

Hubbell vs. *Clannon*, 494

12. Damages on protested bills of exchange are given in lieu of all charges such as premium, protest and postage. The holder can claim *interest* on the damages from the protest, but is not entitled to the difference of exchange.....*Robert & Williams* vs. *Commercial Bank*, 528

DEBTOR AND CREDITOR.

1. A principle which enables a debtor to put his creditors at defiance, and dictate to them the terms on which they are to receive a portion of their claims, is repudiated by law.....*Graves et. al.* vs. *Roy*, 454

2. So where the debtor, residing in Virginia, made an assignment of half his interest in a ship at sea, for the benefit of certain of his creditors, and excluded those who dissent and refuse to release him: *Held*, that such an assignment is null and void as against dissenting creditors..... *ib.*

3. It has been decided in Virginia that an assignment with a condition for a release of the debtor, would not render a deed of trust invalid, provided the debtor conveyed the whole of his property for the benefit of his creditors..... *ib.*

4. The property of the debtor is the common pledge of all his creditors, and when in failing circumstances he can make no disposition of it to the prejudice of his creditors.

Townsend vs. *Louisiana State Marine and Fire Insurance Company*, 551

5. So, a voluntary assignment by a debtor, which provides that a certain debt shall be paid *in full*, and the other creditors that may become parties to the act are to be paid *pro rata*, is *void on its face*, which may be treated as a nullity; and the property thus assigned is liable to seizure by the judgment creditors..... *ib.*

DEMAND.

1. The amicable demand is founded upon the presumption, that if made before suit, the defendant would pay and save costs; and where no amicable demand has been first made, if upon service of citation, the defendant complies with the prayer of the petition, the plaintiff must pay the costs. But it is otherwise if he comes into court to defend the action, and judgment goes against him.....*Amory et. al.* vs *Black*, 264

2. When there is no amicable demand proved, and the want of it is specially pleaded, the judgment will not be affirmed with damages, although the appeal is frivolous.....*Florance* vs. *Alston*, 278

3. So, where the defendant appeared and pleaded the want of an amicable demand, but had no valid defence, he was required to pay all the costs in the inferior court after his first appearance there..... *ib.*

4. The amicable *demand* is admitted by the failure of the defendant to answer an interrogatory put to him to that effect.....*Burns* vs. *Schaumberg*, 286

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DISCUSSION.

1. A defendant who insists on the plea of discussion, must specially point out property and tender the costs. It is not sufficient to aver that the party is ready to advance the costs, and that the principal debtor has property in a particular parish.....*Banks* vs. *Brander et. al.* 274

DOMICIL.

1. The power of the husband over the wife, and her capacity to sue, ratify, or make a contract, is fixed by the law of their domicil.
Garnier vs. *Poydras*, 177

2. Where a debtor absconded from his creditors in France and came to the United States, settled in Louisiana, and died here, where his succession was opened and administered: *Held*, that no other domicil can be assigned but his original one in France, as he did not appear to have manifested an intention to establish himself in Louisiana.
Gravillon vs. *Richards' Executor*, 293

3. The fact of a person remaining in a foreign country, without any intention of establishing himself there, does not operate a change of domicil. But as soon as the will of making a permanent establishment in the country, combined with the fact of his residence, even for a few days, fixes the domicil..... *ib.*

4. Although exiles have two domicils, in one sense, yet as to their successions, the original domicil is regarded as the true one. In questions of doubt, the original domicil is to be considered as the true and legal one..... *ib.*

5. The courts here have the power, and it is their duty to order the remission of funds belonging to a foreign succession opened here, to the representatives and creditors authorized to receive them, by the courts of the domicil of the deceased. Every motive of public policy requires it..... *ib.*

DONATION.

1. Under the Spanish law in making donations, no particular form or clause was required; the consent of the parties, the thing given and the tradition, were sufficient. Even verbal sales and donations were permitted, when tradition followed.....*D'Orgenoy et al.* vs. *Droz*, 389

2. A sale without a *price*, or for a fictitious one, is null as a sale, but is, nevertheless, valid as a donation; provided tradition follows..... *ib.*

3. No action can be sustained on a breach of promise to make a donation.
Williams vs *Barton*, 404

EVICTION.

1. A *bona fide* vendor, on *eviction* of his vendee, since the adoption of the Louisiana Code, is not bound to indemnify the latter for *profits not made*, or restore absolutely the *increased value* of the thing sold, above the price of the original sale..... *Bissell et ux.* vs. *Erwin's Heirs*, 143

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2. But in cases of eviction, such increased value of the thing sold, above the price of the original sale, as the parties might have reasonably anticipated at the time of the contract, should be considered as *profits made* by the buyer, and ought, in all cases, to form a part of the damages for which the vendor is liable on his warranty.....*Bissell et ux.* vs. *Erwin's Heirs*, 143

3. The defendant, on eviction, will be allowed to produce evidence of the *increased value* of the property at the time of eviction, above the original price at which he purchased ..... *ib.*

4. The vendor, when the vendee demands security against the danger of eviction, is only bound to offer a person able to contract, with sufficient property, and domiciled within the jurisdiction of the court. The purchaser, or vendee, is not entitled to demand real security .. *Cross* vs. *Armor*, 477

EVIDENCE.

1. It is necessary to make proof of the genuineness of an act of settlement between co-heirs, when it is offered as evidence of a sale or exchange, and also of the capacity of the heirs who are parties to it, before evidence of possession under it can be received.....*Guerin et al.* vs. *Bagneries*, 14

2. Evidence of the signatures to the private act of settlement among the co-heirs and their capacity, was improperly refused by the court; because, until its genuineness was first shown, its validity and effect could not be examined..... *ib.*

3. Heirs claiming a slave by inheritance, and under an act of settlement among the co-heirs, should be permitted to offer evidence, showing that the slave made part of the inheritance under the will of a deceased ancestor. *ib.*

4. The record of a suit between others, not only proves *rem ipsam*, to wit, that such judgment was recovered, but also a sale of certain goods mentioned in it; but it does not prove that these goods were purchased by the defendant as the consideration of the note sued on, and sold as the property of this vendor.....*Morgan* vs. *Yarborough*, 74

5. A bill of goods purchased by the defendant, is not evidence in a suit between him and the transferree, of the note alleged to have been given for the price of them..... *ib.*

6. If some parts of the evidence offered in a case are irrelevant, it affords no good ground to reject the whole. The objectionable parts only should be disregarded.....*Le Bret* vs. *Belzons*, 93

7. Irrelevant testimony will be disregarded in this court, but furnishes no ground for remanding the case..... *ib.*

8. It is too general an objection, to state in a bill of exception, that evidence is inadmissible; the grounds should be stated..... *ib.*

9. Parole evidence will not be admitted to show the usual rate of interest of any particular place in this state. It is either legal or conventional, and the latter must be express, and in writing.....*Poydras* vs. *Delamare et al.*, 98

10. Heirship may be established by parole evidence.

Hosea's Widow and Heirs vs. *Miles*, 107

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11. Parole evidence may be received to prove a verbal agreement in regard to the occupation and repair of certain buildings, although there be a written lease, if the agreement relates to a separate matter not contained in the lease. .....*Kenyon* vs. *Berghel, f. w. c.* 133

12. Parole evidence will be disregarded in construing a written lease; but may be received in proof of a contract posterior to the lease..... *ib.*

13. Parole evidence will be admitted to prove the handwriting of a subscribing witness to a written instrument, after every diligence has been used in vain to find him out, even without showing that he is dead, or resides out of the state.....*Thompson* vs. *Wilson's Executors*, 138

14. Parole evidence will not be admitted to prove a written contract, but it may be received in proof of acts done by the parties, in execution of a written contract.....*Amory et al.* vs. *Black*, 264

15. The record and judgment of a suit between other persons and the plaintiff, are not admissible in evidence, except to show that such judgment was rendered; but the parole evidence on which it was obtained cannot, because it forms part of the record, be received as proof in another suit.
Baptiste, f. w. c. vs. *Soulie, f. w. c.* 268

16. The certificate of the governor, that a justice of the peace before whom certain testimony was taken on commission, was commissioned as such at the time, is insufficient to authenticate the evidence, or a document which the governor never saw, and was ignorant of its existence.
Edmondson vs. *Mississippi and Alabama Rail Road Company*, 282

17. Parole evidence is admissible to prove a boundary line, recognized by the parties in support of a plea of prescription; with this limitation it goes merely to prove a fact connected with the actual possession of the party.
Blanc vs. *Duplessis f. m. c.*, 334

18. The attestation of the governor under the great seal of the state, is the best evidence of a justice of the peace's capacity, next to his commission; and where proof of his signature is not required, or is admitted, the governor's certificate, although not annexed to the return of the commission, is full evidence of his official capacity.....*Thatcher* vs. *Goff et. al.*, 360

19. The certificate of the recorder of mortgages is *prima facie* evidence of the matters it contains. It devolves on the adverse party to show informalities, or that the renunciations or raising of the mortgages mentioned in the certificate are irregular.....*Cannon* vs. *Labarre*, 399

20. Parole evidence will not be received to show that on diligent examination of the records of the parish, no act of raising certain mortgages could be found. It is not the best evidence..... *ib.*

21. An auctioneer's certificate is admissible in evidence, even when it shows the sale of certain property was ordered by a different person than is alleged in the pleadings, when he is shown to have been the agent.
Oxnard vs. *Locke et al.*, 447

22. After the death of the auctioneer, parole proof is the best evidence of the correctness of the entries in his record book, and which the nature of the case admits..... *ib.*

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23. A certificate of the collector of the customs made up from the import books of his office, stating that certain custom-house bonds were paid, is not admissible in evidence, when the provisions of the 2249th article of the Louisiana Code are not complied with by first proving the loss of the originals, &c. ..... *Johnston's Heirs* vs. *Cox's Syndic*, 536

EXCEPTIONS.

1. Where the defendant was sued on his promissory note, and averred that "the plaintiff was not the real owner, and had no right to sue:" *Held*, that this is neither a dilatory, declinatory or peremptory *exception*, but is considered an answer to the merits ..... *Burns* vs. *Haynes et al.*, 12

2. Exceptions which come in by way of *proviso*, or in a subsequent statute, are properly matters of defence. ["So, the *proviso* in the registry act, being by way of exception from the enacting clause, need not be taken notice of in a libel to enforce the forfeiture. It is matter of defence to be set up by the party in his claim." 9 *Wheaton*, 421.]
Mathews vs. *Pascal's Executor*, 47

3. Bills of exception to the admissibility or rejection of evidence should state the grounds on which the party relies in so clear a manner as to enable the court to comprehend them. Inadmissibility is, perhaps, too general an objection ..... *Le Bret* vs. *Belzons*, 93

4. An exception which, on the face of it, is frivolous, and puts nothing at issue, need not be set for trial, but may be dismissed on motion.
Bank of Orleans vs. *Rice*, 277

5. The exception of domicil should be first acted on, before swearing the jury to try the issue, if the party is desirous of availing himself of it.
Goldenbow vs. *Wright*, 371

6. Where the same fact is the ground of a dilatory exception and also of the merits of the action, it must be acted on in the trial of the cause; otherwise the fact would be tried summarily, and could not be submitted to a jury ..... *Hobson & Co.* vs. *Whittemore et al.*, 422

EXECUTORS.

1. Where the executor refused to deliver up the estate of the testator to the widow, as natural tutrix of the minor children and heirs, on account of the danger to be apprehended from waste and dilapidation she might occasion the estate: *Held*, that in case of real danger, the legal way to avert it is by provoking the removal or destitution of the tutrix.
Clague's Widow vs. *Clague's Executors*, 1

2. The widow, as tutrix of her children, who are forced heirs of the testator, can at any time take the *seizin* from the testamentary executors on offering them a sufficient sum to pay the moveable legacies..... *ib.*

3. The dispositions in a will, in which property of the estate is to *remain in the hands of executors* until the testator's children or heirs arrive at the

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age of majority, cannot be distinguished from one that would authorize the executors to keep and preserve it for, and return the estate to them, which is a *fidei commissum*, or trust, and is forbidden by law..... *ib.*

Clague's Widow vs. *Clague's Executors*, 1

4. The testator has not the power to extend the period of the executorship to more than one year; nor to direct that the estate should remain in the hands of the executors afterwards; or that they should keep and preserve it for another or others, when there are forced heirs who are present. *ib.*

5. Where an executor's account was rendered in 1804, and appears to have been communicated to the adverse party without objection, or any proceedings had in relation to it, until 1820, it was presumed to have been acquiesced in, and the court adopted it as the basis of its judgment, being the safest mode of doing justice between the parties.

Hodge's Heirs vs. *Durnford's Curator*, 187

6. An extra-judicial settlement of an estate between the executors and heirs, when the parties are all of age and under no disability of contracting, is perfectly valid, and rests necessarily on the same footing as any other convention..... *ib.*

7. In an action by the heirs of the testator, the homologation of the executor's account is no bar to the introduction of evidence to show that the executor had received funds for which he had not accounted, or failed to put in any previous account, when it is offered before he is discharged.

Johnston's Heirs vs. *Cox's Syndic*, 536

8. In case of uncertainty as to the amount due, the executor cannot complain, as it was his duty to have prevented this by rendering a correct account of his administration..... *ib.*

EXECUTORY PROCEEDINGS.

1. Where certain notes were given in payment of the price of property, which in the act of sale are identified with the mortgage retained, and described as being *to the order* of C. H., but it is not stated that they were *endorsed by C. H.: Held*, that the mortgagee or transferree cannot proceed by the executory process against the property to enforce payment of the notes. The endorsement is a matter *en pais* of which the act furnishes no proof..... *Dakin et al.* vs. *Ganahl et al.*, 512

2. Where an act of pledge transfers to the pledgee all the pledgor's rights and interest to certain notes secured by mortgage, subrogating him to all his rights of proceeding by the executory process to enforce payment of the notes, the pledgee may have his order of seizure and sale in the same manner as the pledgor could have had.....*Armstrongs* vs. *Baldwin, Syndic, &c.*, 564

FACTORS.

1. Factors and commission merchants cannot claim a lien or privilege on goods, moneys or property for a general balance of account against the owner, over an attaching creditor....*Gray, Durrive & Co.* vs. *Bledsoe et al.*, 489

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2. The only privilege a factor or commission merchant has, is expressly given by article 3214, of the Louisiana Code, and is limited to specific advances made on goods consigned after they have come into his possession, or he has received a bill of lading, or letter of advice that they have been despatched to him.....*Gray, Durrive & Co.* vs. *Bledsoe et al.*, 489

3. When a merchant ordered a shipment of articles in Havana to his house in New-York, and was privy to selecting and making up the invoices, he cannot afterwards object to the quantity of any of the articles composing them .....*Hernandez et al.* vs. *Babcock's Executors*, 587

4. So, if the shipper or factor furnished false invoices to the consignee for part of the cargo, with the privity of the buyer, when the true ones were sent with the bills of lading, it cannot affect the validity of the contract between the factor and buyer ..... *ib.*

5. A merchant ordered a shipment of colonial articles of produce from Havana to his house in New-York, and to draw on it for reimbursement. The factor or shipper consigned the cargo to a special agent, with directions not to deliver it to the consignees unless the bills were accepted, and their payment secured, but to sell it on *his* (*i. e.* the shipper's) *account*, and the cargo was thus sold *at a loss: Held*, that the buyer was bound for the *loss and charges*, as his house neither accepted the bills or offered any security for their payment, when notified of the arrival of the goods ..... *ib.*

GARNISHEES.

1. The refusal or failure of garnishees to answer interrogatories concerning property of the defendant attached in their hands, is to be taken as a legal confession of sufficient property in their possession to satisfy the attachment, and to bring the defendant into court.

Parmely et al. vs. *Bradbury*, 351

2. The law does not require an order of court to the garnishee, directing him to answer interrogatories; the service of a copy of the petition containing the interrogatories and citation, are a sufficient warning for him to answer .... *ib.*

3. Where garnishees were asked if they had property of the defendant in their possession, and whether it was worth a *certain sum*, and they answered categorically, "Yes, one hundred and four bales of cotton:" *Held*, that they could show, when called on by the plaintiff to pay the proceeds over in satisfaction of his judgment against the defendant, that the cotton was previously attached in their hands at the suit of other creditors.

Robeson et al. vs. *Mississippi and Alabama Rail Road Company et al.*, 465

4. *Eustis, J.*, dissenting.—Where garnishees, by their answer, acknowledge that they have property in their possession belonging to the defendant sufficient to satisfy the plaintiff's debt, they should not be allowed afterwards to defeat this acknowledgment, when called on to pay the plaintiff's judgment, by pleading that the property had been *previously* attached .. *ib.*, 466

5. On an appeal from an order making a rule absolute, requiring gar-

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nishees to pay money and effects due by them to the defendant over to the sheriff, subject to the order of court: *Held*, that no answer to the rule in writing is required. Their liability is to be tested by their answer to interrogatories.....*Oakey et al.* vs. *Mississippi and Alabama Rail Road Co. et al.*, 567

6. An attaching creditor cannot compel the garnishee to pay a debt due by him, as such, into court, even after judgment against the defendant..... *ib.*

7. The order in which previous attachments are to be paid must be first ascertained before the last attaching creditor can obtain judgment against the garnishee ..... *ib.*

HUSBAND AND WIFE.

1. The power of the husband over the wife, and her capacity to sue, ratify, or make a contract, is fixed by the law of their domicil. So, where a married woman residing in France, and separated in bed and board from her husband, seeks to annul a transaction made by her agent in Louisiana, on the ground that she was *unauthorized* to cause it to be made: *Held*, that the controversy must be determined by the laws of France and not those of Louisiana, where she seeks to enforce her legal rights.

Garnier vs. *Poydras*, 177

2. A transaction entered into by a woman separated in property from her husband, in order to be binding and valid, under the laws of France, an *authorization* from the court or her husband is necessary..... *ib.*

3. In France a separation from bed and board produces the same civil effects as to the wife, as a separation in property; and in both cases her *incapacity* to contract, without the necessary authorization, or voluntarily to execute an *unauthorized* contract, continues until the dissolution of the marriage ..... *ib.*

4. According to the laws of France, a separation from bed and board *disables* the wife from contracting, sueing or ratifying a contract without the special *authorization* of the court or her husband; and this authorization must be special or *clearly result* from some act in writing for *all acts done or to be done*..... *ib.*

5. Proof of authorization under which the wife was proceeding in her suit, being insufficient, and the defendant having the right to a final decision of the case on the merits, the court, instead of non-suiting the plaintiff, remanded the cause for a new trial, and for both parties to make new proofs. *ib.*

6. *Eustis, J., dissenting*—Was of opinion that judgment of non-suit ought to be entered, as the plaintiff would not be bound by a judgment against her; and it was unjust to allow her to litigate her rights without being bound by a decision which might be rendered adversely to them..... *ib.*

7. A separation from bed and board by the tribunals of France, does not remove the wife's incapacity to sue without the authorization of her husband.....*Rapp* vs. *Peyroux*, 218

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INJUNCTION.

An affidavit, stating "that all the material allegations in the petition are true to the best of the affiant's knowledge and belief," is insufficient to support an injunction.....*Catlett* vs. *M'Donald*, 44

2. To sustain an injunction, the affidavit must be such as to subject the party to the penalties of perjury, if the facts sworn to appear to be untrue. *ib.*

3. When the affidavit is *insufficient*, the injunction must be dissolved, even if it appears from the evidence that the party would be instantly entitled to a new one..... *ib.*

4. In dissolving an injunction, not more than twenty per cent. damages can be allowed, unless damages to a greater amount *be proved*. It is not sufficient to add fifty dollars to the damages for counsel fees, which the party will have to pay.....*Wilcox* vs. *Bundy*, 380

5. In dissolving injunctions, interest can only be allowed on the *amount* of the judgment actually due.....*Cannon* vs. *Labarre*, 399

INSOLVENCY.

1. An insolvent succession, the administration of which is refused or will not be accepted by the beneficiary heirs, their agent, tutor or curator, may be surrendered to the creditors, who are authorized to appoint syndics to administer thereon.....*Baron's Widow and Heirs* vs. *Hodge*, 58

2. So, where the widow and tutrix of the minor children provoked the meeting of creditors of the insolvent estate of her deceased husband, abandoned the administration and appeared in the *concurso* and voted for syndics: *Held*, that she was thereby precluded from making any opposition to the proceedings previously had in the case..... *ib.*

3. The act for the relief of insolvent debtors in actual custody, requires as a pre-requisite to obtain the relief it affords, if the applicant is a merchant or trader, that he deposit in court his books and accounts, along with his schedule.....*Bell* vs. *His Creditors*, 199

4. Although the law does not require and cannot oblige a merchant or trader to keep books, yet to be entitled to the benefit of its provisions relating to insolvent debtors, he *must have and deposit* them in court for the inspection of his creditors..... *ib.*

INSURANCE.

1. The plaintiff established his claim for a less sum than demanded and had judgment, and the only defence was want of an insurable interest, which was conclusively proved; and judgment was confirmed.

Berthoud vs. *Mississippi Marine and Fire Insurance Company*, 481

2. Where there is nothing in the policy of insurance which renders the

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insurers liable for the acts of the captain or officers of steam-boats, their liability for their conduct must depend on the law.

Herman, Briggs & Co. vs. *Western Marine and Fire Insurance Company*, 516

3. Where the testimony of the officers of steam-boats states that it is usual to take vessels in tow in their voyages up and down the river, it cannot have effect against the insurers, when there is no evidence as to the *usage* of insurance in such cases, or whether such a privilege is or is not stipulated in the policies..... *ib.*

4. The business of towing ships and vessels is entirely separate and distinct from all things connected with or incidental to the navigation of the river by steam-boats, or the transportation of freight and passengers..... *ib.*

5. So, where a steam-boat was lost by the conduct of the captain in attempting to proceed on his voyage with a brig in tow lashed alongside in stormy weather, and it does not appear there was any clause in the policy allowing the privilege of taking vessels in tow, or that the insurers acquiesced in this usage, the insured cannot recover of the underwriters..... *ib.*

6. Where the agent of the insured made his written application, and the rate of premium was marked on it by the secretary of the office, but not signed by him, and he expressly informed the agent that the policy would not be delivered until the premium was paid, and in the meantime the vessel insured was destroyed by fire, five days after the application: *Held*, that the contract of insurance was not complete, the premium not being paid nor the policy delivered, and the underwriters were discharged.

Berthoud vs. *Atlantic Insurance Company*, 539

7. No contract is complete without the assent of the parties. In reciprocal contracts it must be expressed. In this case the assent of the defendants was wanting. The proposition to insure was accepted with a condition which was never complied with..... *ib.*

8. Where the insured settled with the underwriters for a partial loss, and gave up their policy without notifying them of a claim pending in the admiralty court for salvage, which if successful would increase the loss: *Held*, that the insured cannot recover of the insurers for any further loss they may sustain on account of salvage decreed to the salvors.

Batre et. al. vs. *Louisiana Insurance Company*, 577

9. Had the insured notified the insurers at the time of the settlement of this outstanding claim, a different case would have presented itself..... *ib.*

10. A general average contribution arises from a sacrifice deliberately made of property of one of the parties in the adventure, for the benefit of the others, whereby his loss is their gain.....*Barelli et al.* vs. *Hagan*, 580

11. The owners of slaves are bound to contribute for them to a general average, occasioned by a jettison from the ship in which they are shipped, and on board at the time..... *ib.*

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INTEREST.

1. Where the purchaser stipulated to pay interest annually on the price of a plantation, and there is no evidence to justify him in withholding payment, he can only be relieved by demanding the deposit of the price.
Hampton et al. vs. *Barrett*, 338

2. Interest will not be allowed on damages arising on protested bills of exchange.....*Crosby* vs. *Morton et al.* 357

3. Interest cannot be allowed on an unliquidated demand.
Goldenbow vs. *Wright*, 371

JUDGMENT.

1. A judgment will be reversed for not containing *reasons* as required by the constitution; but when the record enables the court to examine the case on its merits, it will render such judgment as ought to have been given by the court below..... *Burns* vs. *Haynes et al.*, 12

2. On a motion for judgment on a bail bond against the principal and his sureties, it is sufficient to assign *as reasons* of the judgment, that "the appearance bond of the accused was called, and he failed to appear in compliance with his recognizance." .....*State* vs. *Gossin et al.*, 96

3. A judgment and verdict which are deficient in the forms required by law, will be anuulled and set aside; but when this court is in possession of all the facts and evidence to enable it to pronounce definitively in a case, it will render such judgment as should have been given in the court below on the merits.....*Hosea's widow and Heirs* vs. *Miles*, 107

4. Where a judgment was rendered at the instance and on the prayer of the party, he cannot be allowed to open it after it is final, and have *errors of calculation*, alleged to exist to his prejudice, corrected.
Browder's Curator vs. *Browder's Heirs*, &c., 156

5. A judgment which assigns no reasons must be reversed; but the Supreme Court, when the record enables it, will render such judgment as ought to have been given in the first instance.....*Amory et al.* vs. *Black*, 264

6. The jury are the best judges of the facts submitted to them; and unless an examination of the evidence shows error to induce a reversal, the judgment will not be disturbed.....*Baptiste, f. w. c.*, vs. *Soulie, f. w. c.*, 268

7. Where the judgment is based on the verdict of a jury, involving questions of fact merely, which appear to have been satisfactorily proved, it will not be disturbed. Informalities complained of, not sufficient to reverse the judgment, will not be noticed.....*Gooding* vs. *Atlantic Insurance Company*, 450

JURISDICTION.

1. In an attachment case, commenced in the Parish Court of New-Orleans, where the defendant died during the pendency of the suit, and his

succession opened in a remote parish: *Held*, that the power of the court of general jurisdiction ceased, and the cause was ordered to be transferred to the Court of Probates for the parish in which the succession was opened. PAGE

Oakey et al. vs. *Ducker*, 375

2. *Eustis, J.*, dissenting.—Did not consider a mere auxiliary administration, in a remote parish, of the estate of an intestate domiciliated out of the state, but dying in it, leaving *moveable* property under attachment in our courts of general jurisdiction, *divested* them of that jurisdiction ..... *ib.*

3. It is settled in most of the states, and by the Supreme Court of the United States, that a purchaser under a decree of the Orphans Court is bound to look to the jurisdiction, but that the truth of the record concerning matters within that jurisdiction cannot be disputed, and a purchaser under a decree of court is not bound to look beyond the jurisdiction.

Lalanne's Heirs vs. *Moreau*, 431

4. An officer of court is liable to be sued in any court of competent jurisdiction for a breach of duty, or for any injury or tort committed by him in the course of his official duties.....*Edwards* vs. *Nicholson*, 582

5. The marshal of the United States is liable to be sued in an action for damages, in a state court of competent jurisdiction, for failing and refusing to deliver and convey to the plaintiff certain property which he purchased at the marshal's sale, made under a judgment of the United States District Court ..... *ib.*

6. *Rost, J.*, dissenting—Was of opinion the state courts had no jurisdiction of this case, not even the claim for damages; that the whole subject matter belonged exclusively to the District or Circuit Court of the United States ..... *ib.*

LAND TITLES—LAWS.

1. The act of Congress of the 20th May, 1820, grants the right of pre-emption to front proprietors, to purchase an equal quantity of land in their rear, and adjacent to their front tract, not exceeding the same, and extending not more than forty arpents in depth; provided, notice is given and payment made in two years; otherwise, the right of pre-emption shall cease and become void..... .....*Jourdan et al.* vs. *Barrett et al.* 24

2. Where back concessions or rear lands are claimed by several adjacent front proprietors, situated in the bend of a river, the surveyor general is to divide and apportion them in the most equitable manner, among such front proprietors as avail themselves of their privilege under this act, when by the converging of the side lines, there is not the full quantity for all the claimants..... ..... *ib.*

3. But where only one front proprietor claims the privilege under the act of Congress, to enter his back lands in a bend of the river by converging lines, he is entitled to his full quantity, and the surveyor general is bound to lay it off to him. This right was contingent, and the quantity liable to

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be reduced, so long as the act was in force, but it became absolute, and vested on the expiration of the act, which could not be affected by a revival of the law subsequently; nor by the operations of the surveyor general

Jourdan et al. vs. *Barrett et al.*, 24

4. Such front proprietors as neglected or failed to enter their back concessions, before the expiration of the act, forfeited their right, and when the law was afterwards revived, it did not revive their right, to the prejudice of the only purchaser who had availed himself of the privilege..... *ib.*

5. The decision of the secretary of the treasury, approving the operations of the surveyor general, in making the apportionments among different claimants, is not conclusive upon the legal rights of the parties in a court of justice. The authority of the surveyor general to make this apportionment, is confined to cases of conflict between *different claimants under the same act*..... *ib.*

6. Where certain lots or tracts of land have been located, surveyed and patented, the surveyor general cannot make a subsequent location of another claim, so as to interfere with, or affect the location of the original survey made by his predecessor, under which the land in dispute was sold and patented..... .....*Slack* vs. *Orillion*, 56

7. A special act of Congress, granting a tract of land within certain defined and precise boundaries, is equivalent to a patent, and will hold the land against any previous claim, not located or fixed by precise boundaries. *ib.*

8. The act of Congress passed the 15th June, 1832, giving to front proprietors on water courses, the preference of entering their back lands, provides that notices of such pre-emption claims shall be entered, and the money paid thereon, at least three weeks before the public sale of the lands in the township, by the proclamation of the president; and all lands not so entered, shall be liable to be sold, or afterwards entered as other public lands. The act of the 24th February, 1835, revives this act for one year.

Thompson vs. *Schlater*, 115

9. So, where A enters back lands on the 18th December, 1833, after the township had been offered at public sale by the president, and B, who owned the front tract, entered the same land, as a back concession, in 1836, under the pre-emption law of 1835: *Held*, that the entry and purchase of A, divested the government of its title, and B lost his right of pre-emption, which ceased to exist after the land had been offered at public sale..... *ib.*

10. The rights acquired by a purchaser of public lands, according to the provisions of the pre-emption law, act of 1832, *are vested*, and cannot be taken from him by a subsequent act in 1835, reviving the former law one year..... ..... *ib.*

11. Where the grantee of a tract of land, supposed to contain seventeen arpents, fronting on the Mississippi, sells the lower twelve arpents to two purchasers, (six arpents each,) with certain fixed boundaries, these will control the quantity, in case of deficiency in the whole tract.

Blanc vs. *Duplessis, f. m. c.*, 338

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LEASE.

1. A contract of lease, either verbally or in writing, made by one partner, is binding on the partnership when it appears the firm occupied the leased premises, and in which the affairs of the partnership was conducted.
Reynolds vs. *Swain et al.* 193

2. Where a tenant abandons the leased premises before the expiration of the lease, he *is at once* bound for the rent of the *whole term*, and may be sued, *ib.*

3. The principles settled in the case of *Christy* vs. *Casanave*, 2 *Martin*, *N. S.*, 451, making tenants who *abandon* their lease liable at once for the whole rent, are still in *force*, notwithstanding the repeal of all the civil laws not found in the Louisiana Code..... *ib.*

4. Where a contract of lease stipulates that the lessee shall pay all the state, parish and city taxes, and keep the side-walks in repair, it cannot be construed to extend to the payment of the expenses of paving the street in front of the leased premises ..... *Municipality No.* 2 vs. *Curell*, 318

5. When the city ordinances provide that the owners shall be taxed for the exclusive purpose of paving the streets and making the side-walks in front of their property, the lessee cannot be required to pay this expense, unless he expressly binds himself to do so in his contract of lease ..... *ib.*

MANDATORIES.

1. Directors are not officers of a bank, in the proper sense of the word; nor have they *individually* any power or control in its management. They act collectively, and at stated times; and they are not mandatories, or agents of the bank..... *Louisiana State Bank* vs. *Seneeal*, 525

2. So, where a note was discounted at the instance of one of the directors, who knew, but failed to disclose a condition on which it was given, to wit, that it should not be negotiated, nor payment exacted until certain mortgages were released: *Held*, that the bank is not to be considered as cognizant of the condition, and is entitled to recover notwithstanding it .... *ib.*

MINORS.

1. According to the Spanish law, minors had a legal mortgage on the property of the *sureties* of their curator *ad bona*, which existed without being registered. But since the adoption of the Louisiana Code, this mortgage is not recognized in relation to the *sureties* of curators.
Roche's Heirs vs. *Groysilliere et al.*, 238

2. Where there is a formal decree of the Court of Probates, recognizing the necessity of selling property inherited by minors, for the payment of the debts of the succession, giving an opportunity to the attorney of absent heirs to show, that in fact no such necessity existed; the purchaser is not bound to look beyond this..... *Lalanne's Heirs* vs. *Moreau*, 431

3. No alienation of minors' property can take place without the advice and consent of a family meeting, and upon sufficient cause shown..... *ib.*

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MORTGAGE.

1. Under the Spanish laws as they existed in the state in 1824, a legal mortgage attached in favor of minors upon the property of the *sureties* of their curator *ad bona*.....*Roche's Heirs* vs. *Groysilliere*, 238

2. On the adoption of the Louisiana Code in 1825, mortgages, whether legal, conventional or judicial, are required to be recorded; and in order to preserve their evidence, the inscription of mortgages must be renewed before the expiration of ten years; otherwise their effect ceases after the expiration of that time, even against the contracting party..... *ib.*

3. Mortgages to which husbands, tutors, and curators are subjected by law, are the only ones not requiring registry by the code; but under the Spanish law there is no exception made with respect to the legal mortgage on the property of the *surety* of a curator..... *ib.*

4. So, where more than ten years elapsed after the promulgation of the Louisiana Code, before minors asserted their claim against the *surety* of their curator *ad bona*, and without the re-inscription of their legal mortgage within that time: *Held*, that the effect of the mortgage ceased, and it could no longer be enforced against the property on which it previously existed..... *ib.*

5. The article 3298, of the Louisiana Code, provides that a mortgage exists without being recorded in favor of minors, interdicted or absent persons, on the property of their tutors, curators and *others*, &c.; but this mortgage is limited by the code, and does not extend to the property of the *sureties* of tutors, curators *ad bona &c*.....*Same Case*, 247

OFFICE.

1. Where an act of the legislature creating the office of President of the Board of Public Works, provides, "that the governor, as soon as may be after the passage of the act, *and every two years thereafter*, shall nominate and appoint, &c., a President of the Board of Public Works:" *Held*, that the word thereafter referred to its first antecedent, to wit, the passage of the act, and that the *duration* of the office is to be reckoned every *second year* from the date of the act, and a new appointment made accordingly.

Bry vs. *Woodrooff*, 556

OFFICERS—SEE JURISDICTION.

PARTNERSHIP.

1. In an action by the heirs of a deceased brother, against the succession of the other, for wages as clerk of the latter, when the evidence preponderates to show he was a partner of his deceased brother, he will be so considered, and a recovery of wages as clerk, under these circumstances, refused.

Jenkins' Heirs vs. *Jenkins' Curator*, 102

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2. Where the heirs of a deceased partner, being of age, renew the partnership with the surviving partner, and suffer the partnership property to remain during five years under his exclusive control and management, it will be presumed they were satisfied with his diligence; and they cannot claim from his executors *profits that he might have made*, on the ground of negligence or mismanagement..... *Reynaud's Heirs* vs. *Peytavin's Executors*, 121

3. In a universal partnership, under the Spanish law, the personal and household expenses of the individual partners were chargeable to the firm, however unequal they might be in amount..... *ib.*

4. A contract of lease is binding on a partnership, if made verbally or in writing by *one* of the partners alone, when it appears the *firm* occupied the leased premises and carried on the business of the partnership therein. *Reynolds* vs. *Swain et al.*, 193

5. Even in ordinary partnerships, the contract of one partner, made without the authority of the other, is binding on them, if it appears the partnership was benefited thereby ..... *ib.*

6. The owners of steam-boats carrying freight and passengers are commercial partners; and in liquidating the partnership affairs, when some of the partners are insolvent, the other partner cannot withdraw his proportion of the proceeds of the steam-boat until the partnership debts are first paid ..... *Claiborne et al.* vs. *Their Creditors*, 279

7. The proceeds of insurance on a lost steam-boat owned by several partners are partnership funds, and must be first applied to the payment of partnership debts ,in preference to those of the individual owners or partners *ib.*

8. An unincorporated company, or association, formed of stockholders in the steamer Cuba, which appointed commissioners, with authority to raise money on pledge, bottomry or mortgage, and they executed their note for five thousand dollars, on the hypothecation of the boat, which was negotiated, and the holder sued the defendant alone, as one of the stockholders: *Held*, that he was liable *as such*, *individually*, for the amount of the note. *Vigers et al.* vs. *Sainet*, 300

9. Stockholders in unincorporated companies are liable in the same manner as other partnerships; and partnerships, or unincorporated companies for the purchase and sale of personal property, or for carrying it for hire in ships or other vessels, are commercial partnerships, and the stockholders are liable *in solido* for the debts of the company ..... *ib.*

10. Where a commercial firm signs an attachment bond as surety, the bond is not thereby vitiated, although the partnership may not be bound; for the partner who subscribes the name of the firm is in all cases bound. *Thatcher* vs. *Goff et al.*, 360

11. Partners in joint stock companies have no action against the company, as such, except for the settlement of accounts and partition, after the association is dissolved..... *Lesseps* vs. *Architect Company*, 414

12. If the company wrongfully confiscates or withholds the stock of a partner, he has an action to be reinstated in his rights, but his stock will remain subject to the debts and losses of the company, until its dissolution, *ib.*

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13. Commercial partners may all be sued in the parish in which they conduct their business, although one of them resides and is domiciliated in a different parish.....*Hobson & Co.* vs. *Whittemore et al.*, 422

14. On the dissolution of a partnership by mutual consent, it still continues for the purpose of liquidation; and all the partners must join in a suit against any of its debtors, for the collection of debts due the firm.
Cutler vs. *Cochran*, 482

15. So, on a dissolution of the firm by the death of a partner, the surviving partner cannot sue without joining the representatives of the deceased one..... *ib.*

16. Where an obligation is made to a commercial firm, the partners composing it must join in the action. The debt is due to the partnership *collectively*, and not to one or the other of the partners, as creditors *in solido*.. *ib.*

17. An action cannot be maintained by one partner for the *use of himself and the others* when his authority to sue is expressly denied and not proved, *ib.*

PLEADINGS.

1. The plaintiff is bound to set out every fact material to his case, whether it involves a positive or a negative; but he is not required to allege the absence or non-existence of facts which might defeat his action.
Mathews vs. *Pascal's Executor*, 47

2. In a redhibitory action, under the statute of 1834, which presumes that a slave is a *runaway at the time of sale*, if he elopes within sixty days afterwards, it is sufficient to *allege* that the slave in question *ran away* within a *few days* after the sale, when the evidence shows it was less than sixty..... *ib.*

3. So, if the infliction of unusual punishment is proved, or that the slave has been in the state more than eight months, it destroys this presumption of law, that a redhibitory vice existed at the time of sale; but the plaintiff is not required to *allege* that neither of these facts existed..... *ib.*

4. But it has been held, that a plaintiff who claimed the forfeiture of a slave, on its removal from Virginia by a tenant widower, *without the consent* of the reversioner, or heir, was bound to allege and prove the *absence* of that consent..... *ib.*

5. It is a general rule that the negative is not to be proved, but this does not apply to a case in which a party charges another with a culpable neglect or breach of duty; for it is one of the first principles of justice, not to presume that a person acted illegally..... *ib.*

6. Where the buyer institutes his redhibitory action under the act of 1834, which creates the presumption that a slave who runs away within two months after the sale, was a *runaway* before the sale; *provided* said slave had not been in the state *more than eight months: Held*, that the plaintiff need not allege and prove this fact. It is for the defendant to show that he comes within the *proviso* as a matter of defence..... *ib.*

7. The want of the christian name of the defendant in the petition, if it be a dilatory exception, is waived by a plea to the merits.
Parmely et al. vs. *Bradbury*, 351

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8. The original and supplemental petition are to be taken as one and the same proceeding. Any variance between a note or document annexed, and the description of it in the petition, is cured by the note or document when offered in evidence, which must govern.....*Weyman et al.* vs. *Cater & Crop*, 492

PLEDGE.

1. Creditors holding certain notes in pledge, which they cause to be seized by the sheriff, on their judgment, do not, thereby, divest themselves of the possession of the pledge; although illegally seized, they are still in the possession of the sheriff, as an officer of court, subject to the right of the pledgees.....*Goodrich et al.* vs. *Southmayd*, 339

2. Where an act of pledge transfers to the pledgee all the pledgor's rights and interest to certain notes secured by mortgage, subrogating him to all his rights of proceedings by the executory process to enforce payment of the notes, the pledgee may have his order of seizure in the same manner as the pledgor could have had.....*Armstrongs* vs. *Baldwin, Syndic*, 564

POLICE JURY.

1. The construction of dikes and levees, and removal of obstructions in the beds of rivers and navigable streams, are under the exclusive jurisdiction of the police jury of the parish through which these streams run.

Sicard vs. *Chitz et al.*, 111

2. So, where the defendants, by order of the police jury of Pointe Coupée, cut away a dam and removed the obstructions in the bed, and which had been made across *Fausse Riviere*, by the plaintiff: *Held*, that they were not liable in an action for damages at the suit of the plaintiff..... *ib.*

POSSESSION.

1. No physical act in taking possession, is necessary under a sale by notarial act. The intention of the purchaser, which the law presumes, coupled with the power which the act of sale gives, vests the possession in him. The *right* is taken for the fact, and the buyer is seized of the thing corporally by the execution of the title.....*Ellis* vs. *Prevost et al.*, 230

2. There is but one kind of possession known to the law, which commences by the corporeal apprehension of the thing, or the signing of the title which transfers it; and continues whether or not the possessor actually occupies and detains the thing, until he be disturbed in fact or in law..... *ib.*

3. So, all possessors, who have possessed quietly and without any interruption, by virtue of one of the titles prescribed in the 47th article of the Code of Practice, for more than a year, previous to being disturbed, can maintain a possessory action; and the possession of less than one year is sufficient, in case of eviction by *force and fraud*..... *ib.*

4. Where a party proves actual possession to certain and fixed boundaries,

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by making roads, levees and the front fences, he will hold by prescription to the extent of his boundary, against an older title.

Blanc vs. *Duplessis et al.* 334

5. When two possessions lap, that which is most perfect and best characterizes the right of property, is to be preferred; that which is corporeal and manifested by acts peaceable and notorious, will prevail over that which is merely intentional..... *ib.*

6. No relative nullities in titles accompanied by possession, not even those resulting from fraud, can be inquired into collaterally; it must be by direct action.....*D'Orgenoy et al.* vs. *Droz*, 389

7. Naked possession for more than a year, creates the presumption in the possessor, sufficient to put the right owner upon proof of his title. He must make that proof, as plaintiff, in a direct action for that purpose, and is not permitted to throw the burden of proof on the possessor, by alleging title when he is sued for a disturbance ..... *ib.*

8. So, the person claiming to be the right owner, when sued for disturbance, cannot bring a petitory action until after judgment in the possessory one; and if he is condemned, not until he has satisfied the judgment..... *ib.*

9. A final judgment has the effect to exclude any adverse possession, within the boundaries it establishes; any subsequent possession must be by enclosures, or under a new title, to avail the party.

Moore et al. vs. *Pontalba*, 571

10. The confirmation of a land claim is no new title, and will not avail the claimant for the possession, against a confirmation previously made by the board of commissioners, of which the claimant had notice..... *ib.*

11. Where a party purchases without warranty, and without ever taking possession under his title, he must be presumed to be cognizant of the defects of the possession and title of his vendor..... *ib.*

PRACTICE.

1. Service of both citation and petition is necessary to bring a party into court to answer, which is not waived by the defendant's exception, pleading a *misnomer*..... .....*Slocumb et al.* vs. *Bowie*, 10

2. The possession of a note endorsed in blank is *prima facia* evidence of property in the plaintiff, sufficient to throw the burden of proof on the defendant. When the signature is not denied the plaintiff is not bound to prove it.....*Burns* vs. *Haynes et al.*, 12

3. An exception putting at issue the capacity of the plaintiff to sue, is a matter of fact which may properly be submitted to a jury, with the other matters of defence on the merits, the whole being peremptory exceptions.

Hosea's Widow and Heirs vs. *Miles*, 107

4. The fact on which a continuance is asked, should be established by affidavit..... *ib.*

5. A verdict "*for the plaintiff*," without stating for what amount or object, is incorrect and should be set aside, and a new trial awarded..... *ib.*

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6. A verdict and judgment, which are deficient in the forms required by law, will be annulled and set aside; but when this court is in possession of all the facts and evidence to enable it to pronounce definitely in the case, it will render such judgment as should be given in the court below on the merits.....*Hosea's Widow and Heirs* vs. *Miles*, 107

7. Where the party failed to procure the necessary evidence to support his title, and the justice of the case seemed to require it, the cause was remanded for a new trial.....*Culliver* vs. *Garic et al.*, 137

8. Where proof of *authorization* under which the wife was proceeding in her suit, being insufficient, and the defendant having the right to a final decision on the merits, the court, instead of non-suiting the plaintiff, remanded the case for a new trial, and for both parties to make new proof.
Garnier vs. *Poydras*, 177

9. *Eustis, J. dissenting*—Was of opinion judgment of non-suit ought to be entered, as the plaintiff would not be bound by a judgment against her; and it was unjust to allow her to litigate her rights without being bound by a decision adversely to them..... *ib.*

10. This case involves simply a question of fact, turning upon the credibility of a witness, and the judgment of the inferior court is affirmed.
Nott vs. *Botts*, 202

11. When the case presents no question but one of ownership, which turns on mere matters of fact, and the evidence is multifarious and contradictory, the judgment will be affirmed.....*Young* vs. *Walker et al.*, 262

12. A motion for a new trial, after the expiration of three days from the rendition of the judgment, is correctly overruled by the inferior court.
Chandler et al. vs. *Barker*, 316

13. The defendant's counsel may require the clerk, on the cross-examination of the *first witness*, to take down his answer in writing, even when neither party desired it at the commencement of the examination.
Pilié vs. *Stewart*, 364

14. Where the judge refused to allow the testimony to be taken down in writing by the clerk, after the examination of witnesses had commenced, judgment was reversed and a new trial awarded..... *ib.*

15. When a suit or demand is premature, or when the obligation sued on is conditional, and its execution demanded before the condition has been fulfilled, the action must be dismissed.
Groning et al. vs. *W. & L. Krumbhaar*, 402

16. If the defendant, on the trial, abandons title to the property claimed in the petition, but insists on his claim for damages set upon in compensation of the plaintiff's demand, and the latter permits the case to go to the jury in this manner without objection, the verdict and judgment will not be disturbed on this ground.....*Williams* vs. *Barton*, 404

17. The judge can disregard the testimony of witnesses if he disbelieves them, and give judgment as if no evidence had been adduced, on his own knowledge of the case.....*Howe* vs. *Manning's Executor*, 412

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18. The acknowledgment of the father to pay the note of his son, was indirect, and failed to satisfy the district judge of his liability, and this court did not feel authorized to disturb the judgment.....*Hoffman* vs. *Holland*, 418

19. The sickness of a witness not summoned, and the absence of the attorney trying a suit in another court, are no grounds for a continuance or a new trial.....*Soey's Heirs* vs. *Soey's Curator*, 424

20. This case was remanded for the defendant to prove offsets to the note sued on, and no further evidence being offered, judgment was properly given for the entire sum .....*Yard & Blois* vs. *Syndic Srodes*, 427

21. The Supreme Court will not consider one decision alone as finally settling the jurisprudence on any given point or question of law, which is not settled by positive legislation.....*Priscilla Smith, f. w. c.* vs. *Smith*, 441

22. In a case of redhibition depending upon the testimony of witnesses which stands uncontradicted, and the judge *a quo* gave full faith to it, this court cannot afford relief to the appellant.....*Peyroux* vs. *Chasal*, 459

23. The execution of a bail bond need not be proved when it purports to have been signed in the presence, and witnessed by a person who certifies the record *as clerk* of the court; this will prove his quality or capacity as clerk in his signature to the bond .....*State* vs. *Gossin et al.* 96

24. In judicial proceedings, when the contrary is not shown or does not appear, the presumption is that they were regular.....*Hubbell* vs. *Clannon*, 494

25. Where the judgment expresses that it was confirmed and made final on due proof of the plaintiff's demand, it is sufficient grounds, according to the article 315 of the Code of Practice ..... *ib.*

26. The neglect of the clerk to record the judgment cannot authorize its reversal..... *ib.*

27. A judgment becomes final *three days* after its rendition, although prematurely signed..... *ib.*

28. The maker of a note cannot complain that judgment was not rendered against him and the endorser *in solido*, even when they are both sued, *ib.*

29. In a petitory action on failure to show title in the plaintiff, judgment must be for the defendant .....*Adams, Administrator, &c.* vs. *Bell*, 555

PRESCRIPTION.

1. When it is shown that the defendant acknowledged the plaintiff's services were worth a certain sum, he cannot be allowed to plead prescription against any part of the claim.....*Hoffman* vs. *Atcheson et al.*, 476

PRINCIPAL AND AGENT.

1. Where the defendant, representing himself as agent, induces the plaintiffs to purchase an assorted cargo for his principals, which is shipped in their vessel, invoices made out for their account and risk, and a bill

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drawn on *them* by the plaintiffs for the amount, which is accepted but *not paid*: *Held*, that the agent is not liable..... .....*Zacharie et al.* vs. *Nash*, 20

2. A person who draws a bill of exchange, declaring himself at the same time to be the *agent of the drawees*, is not liable, individually, in case of non-payment..... *ib.*

3. Where the principal, residing in France, draws on her agent in this state, to pay over a certain sum of money to a third person, with the *usual* interest, it amounts to nothing more on her part, than a promise to pay the amount, with interest, at the place where the draft is payable.

Poydras vs. *Delamare*, 98

4. On the refusal of the agent to pay the order of his principal, the latter is alone bound, and is not entiled to notice on such refusal..... *ib.*

5. The agent having funds of his principal in his hands, and refusing to pay them over to the payee of his principal, is not individually bound. The neglect of the agent to obey the directions of his principal, does not render him liable to a third person..... *ib.*

6. Where an agent with general and special powers, is instructed to purchase three hundred hogsheads of tobacco for the London market, and without additional authority he ships ninety-nine hogsheads to New-York, on which a loss is sustained, he is answerable therefor.

Vigers et al. vs. *Kilshaw*, 438

7. So, where an agent acts in faith, but indiscreetly, and exceeds his instructions, he will be responsible to his principal for the loss sustained, or that results from his unauthorized acts..... *ib.*

PRIVILEGE.

1. According to the provisions of the Louisiana Code, article 3216, No. 3, those who have furnished the owners with materials for the construction or repair of an edifice, are entitled to a privilege on the building or work constructed, for the *price* of such materials.....*Andry* vs. *Guyol et al.*, 8

2. So, where the vendee of a lot of ground received materials from a third person, for the erection of a house on it: *Held*, that the material man is entitled to receive the *price* of the materials furnished, by *privilege*, over the vendor of the lot, to be paid from the price of the house in the hands of the sheriff, which was sold with the lot..... *ib.*

PUBLIC PLACE.—See Corporation of New-Orleans.

RATIFICATION.

1. Where the ratification of a sale of certain proceedings is relied on, the burden of proof is on the party alleging it, and facts must be established from which the *ratification necessarily results*, when there is no positive proof.. .....*Rivas' Heirs* vs. *Bernard*, 159

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2. To give validity to a contract which is merely voidable, it must be deliberately, and upon examination, ratified and *confirmed* by the party, to be binding on him .....*Rivas' Heirs* vs. *Bernard*, 159

RECONVENTION.

1. In an action of slander for damages, in consequence of slanderous words spoken, the defendant cannot reconvene for slanderous words alleged to have been uttered by the plaintiff against him.....*Kemp* vs. *Amacker*, 65

2. The demand in reconvention, in an action for slanderous words spoken, is not necessarily connected with and incidental to the principal one, as is required by law..... *ib.*

SALE.

1. Where a tract of land is sold for cash at the probate sale of a succession, and expressly declared to be subject to a lien in favor of the vendor for the original price and interest, and the purchaser bids over this amount, he is entitled to the benefit of his bid, by paying *the overplus in cash.*

Bradford vs. *Dortch et al.*, 79

2. So, if the sum due the vendor has been seized in execution, the purchaser of the land at probate sale takes it subject to this claim, in whose soever hands it may come, when it is so declared ..... *ib.*

3. The sale of an estate inherited by minor heirs may be made below the appraisement price, in order to pay the debts of the ancestor.

Hutchiss, Tutor, &c., vs. *Dodd et al.*, 84

4. When such sale is provoked by a creditor, and it is not shown to be necessary for the payment of the debts, but principally to effect a partition, it is null and void ..... *ib.*

5. An act for the retrocession of certain property, signed only by the purchaser, is not binding, and has no force on the seller, until accepted by him in some legal manner .....*Municipality No.* 1 vs. *Barnett*, 344

6. If the date of a purchaser's signature to an act of retrocession be proved, it is a mere pollicitation, until signed or accepted by the other party, and ceases to have any effect the moment his capacity to accept is taken away ..... *ib.*

7. A simulated sale, as between the parties, is absolutely null.

Hiriart vs. *Roger et al.*, 126

8. Where the evidence establishes fraud on the part of the purchaser, the sale will be declared fraudulent and void as regards creditors, at the suit of a creditor of the original vendor..... *ib.*

9. A person who has a mere equitable interest in property is not allowed to question the validity of a sale of it, when he permitted the legal title to remain in another, and when it passed into the hands of a *bonâ fide* purchaser without notice .....*Dozer* vs. *Squires & Donaud et al.*, 130

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10. In sales *per aversionem*, the purchaser cannot claim diminution of price for a deficiency in measurement; but if he has been led into error by the fraudulent concealment of the vendor as to the real quantity, he is not without remedy, and will be allowed to produce evidence of fraud and concealment under the proper allegations .....*Lesassier* vs. *Dashiell*, 151

11. Good faith is required in sales *per aversionem*, as much as in any other kind of contracts; and when fraud and concealment is alleged in the pleadings, the court should allow the inquiry to be gone into..... *ib.*

12. So, the purchaser was permitted to introduce evidence to show that the vendor knew at the time of the sale, which was *per aversionem*, that the tract of land described in the act of sale contained less than the quantity mentioned .... *ib.*

13. The adjudication of property held in common between the surviving parent and minor children is *alone authorized*. The separate property of the deceased parent descends to his children, and can only be alienated in the manner prescribed by law for the sale of minors' property.
Rivas' Heirs vs. *Bernard*, 159

14. Where the ratification of a sale is relied on, the burden of proof is on the party alleging it, and facts must be established from which the *ratification necessarily results* when there is no positive proof ..... *ib.*

15. An agreement to sell a lot of ground, in which it is designated and the price and terms of payment specified, is a *sale*, according to article 2431 of the Louisiana Code, and the seller is bound to execute a title accordingly.
Long vs. *French*, 257

16. Property claimed in a suit, in virtue of *a sale*, cannot be alienated by the adverse party, pending the action, so as to prejudice the plaintiff's right, *ib.*

17. Combinations at auction sales to enhance the price by false bids, or depress it by false assertions, are artifices which *invalidate* the *sale* when practised by those who are parties to it.....*Baham* vs. *Bach*, 287

18. As soon as the auctioneer declares the highest bidder to be the purchaser, and the thing sold is adjudicated to him, the contract of sale is subject to the same rules which govern ordinary sales ..... *ib.*

19. Where the act of sale contains the clause *de non alienando*, the vendor is relieved from the necessity of making the third possessor a party to the executory proceedings in asserting his mortgage against the mortgaged premises .....*Nicolet's Executor* vs. *Moreau et al.*, 313

20. The buyer, at probate sale, to whom a slave is adjudicated, cannot avoid the sale and payment of the price on the ground of the redhibitory vice of running away, without administering proof that this vice existed at or before the sale .....*Fortier et al.* vs. *Labranche*, 355

21. An agreement by the heirs to rescind a probate sale of a slave is invalid, if not made in writing; and where some of the heirs are minors it cannot be legally made in any form..... ..... *ib.*

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22. In the probate sale of a slave, to pay the debts of a succession, where the executor expressly declares he does not warrant against any of the redhibitory vices or maladies prescribed by law, the purchaser cannot avail himself of the redhibitory vice of an habitual runaway, to avoid the sale and payment of the price, even if this fact was known to the owner in his lifetime, and not declared.....*Magoffin* vs. *Stringer et al.*, 370

23. The price of a sale must be serious; and a price which is out of all proportion with the value of the thing sold, invalidates the sale.
D'Orgenoy et al. vs. *Droz*, 382

24. A sale without *a price* is not binding as such on the parties; but the act may have effect as a donation, if it contains nothing contrary to public order, provided the purchaser can receive a donation from the vendor, and no injury results to third persons..... *ib.*

25. It has been adopted as a general rule of law, that a sale without a *price* is a donation ..... *ib.*

26. A sale without *a price*, or for a fictitious price, although null as a sale for want of the essential requisites of that contract, is nevertheless valid as a donation, provided tradition follows .....*Same case*, 389

27. It is not necessary that the appointment of appraisers should form a part of the decree, ordering the sale of property inherited by minors to pay the debts of the succession, or that their names be mentioned in the order. Their appointment may be entered afterwards on the minutes of the court. When the substantial requisites of the law are complied with, it will suffice.
Lalanne's Heirs vs. *Moreau*, 431

28. The decree of the Court of Probates, upon the recommendation of a family meeting for the sale of property inherited by minors, to pay the debts of the succession, is so purely *in rem.*, and against the property, independently of the persons, that the sale made under it extinguishes all the mortgages existing in the name of the owner of the property..... *ib.*

29. Sales directed by the Court of Probates are judicial sales to all intents and purposes, and the purchaser is protected by the decree ordering them ..... *ib.*

30. It is settled in most of the states of the Union, that the purchaser under a decree of the Orphan's Court is bound to look to the jurisdiction; but that the truth of the record, concerning matters within that jurisdiction, cannot be disputed. If the facts necessary to give the court jurisdiction appear on the face of the proceedings, the purchaser need not look beyond the decree ..... *ib.*

31. A fraudulent sale of personal property, although followed by possession, gives no right of property to the purchaser; and the true owner has his action against the latter for its recovery.....*Weld et al.* vs. *Donlin*, 460

32. A proprietor who divides a piece of land into lots, and offers them for sale, is not required to submit a plan of his town, for the approval of the police jury..... .....*Ollie* vs. *Ogilvie*, 472

33. So, the owner is not guilty of deception towards the purchasers of

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lots when he omits to mark on his plan *a private road* which had been used to pass over his land, and which is afterwards taken for a public road. It is sufficient to designate the public road and levee existing, as such, at the time... .....*Ollie* vs. *Ogilvie*, 472

34. Where certain lots were sold in reference to a plan representing *a passage* through the square on which some of the lots were made to front, and it turned out that there was no public passage authorized by the corporation, this was held to be such an artifice or error as would avoid and annul the sale at the instance of the purchaser .....*Chalon* vs. *Pepin*, 534

SALE FOR TAXES.

1. In a sale for taxes due the corporation of New-Orleans, by non-resident owners of lots, the name of the owner must, in all cases, be given and published in the proceedings. The designation that the owner is unknown, is insufficient to make such sales valid.

Carmichael vs. *Aikin's Heirs*, 205

2. The debt or corporation tax due by non-resident owners of lots, must be proved, contradictorily with the attorney appointed to represent the absentee, and must be so stated in the judgment..... *ib.*

3. In a forced sale for taxes on city lots, it is insufficient to designate the lots by *number alone*, and the squares in which they are situated. The extent and boundaries should be given..... ..... *ib.*

SERVITUDE.

1. Where two estates are adjacent to each other, the one below owes to the other a natural servitude to receive the waters which run naturally from it, according to the principles settled in the case of *Martin* vs. *Jett.* 12 *Louisiana Reports*, 501.....*Hebert* vs. *Hudson & Lambeth*, 54

2. If the owner of the lower estate, owning the servitude, makes a levee or other obstruction to the natural flow of the water over his land from the upper one, the owner of the latter has his action to cause the obstructions to be removed..... *ib.*

SLAVES AND FREED PERSONS.

1. It is the duty of masters of steam-boats, as soon as a slave is discovered on board without permission, to cause him to be landed or secured.

Goldenbow vs. *Wright*, 371

2. So, where a slave was discovered on board without permission, soon after the defendant's boat started from the port of New-Orleans, and was allowed to be employed by the cook, without any measures being taken for securing him, and he was lost on the trip or voyage, the master was held liable to the owner for his value..... *ib.*

3. Where a slave was taken from Louisiana, with the consent of the owner, to France, although afterwards sent back here, she was thereby enti-

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tled to her freedom, from the fact of having been taken to a country where slavery is not tolerated, and where the slave becomes free by landing on the French soil .....*Priscilla Smith, f. w. c.* vs. *Smith*, 441

4. When owners go out of the state with their slaves, and afterwards emancipate them, they must do so according to the laws of the place where the emancipation takes place..... *ib.*

STEAM BOATS—SEE CARRIERS, PARTNERSHIP.

SUCCESSION.

1. The succession of a *non-resident*, dying in the state, is opened in the parish where he owned real estate, or in *that* in which his principal effects are situated, if he had effects in several parishes; or in the parish where he died, if he had no immoveable property in the state.

Oakey et al. vs. *Ducker*, 375

2. All claims for money, must be brought in the Court of Probates, for the parish in which the succession is opened, whether the deceased had his residence in the state *or out of it*..... *ib.*

SURETY.

1. A surety has the right to claim an indemnification, by instituting suit against his principal, even before making any payment; *a fortiori*, when a judgment has been obtained against him, he may demand indemnification without payment.....*Thompson* vs. *Wilson's Executors*, 138

2. When the surety has paid *upon, or after being sued*, even without informing his principal debtor, he has his recourse, although the debtor was in possession of the means of having the debt declared extinct ..... *ib.*

3. When circumstances existed at the creation of the debt which enabled the debtor to resist payment, still if he suffers his surety to remain ignorant of them, and the latter pays, he will be bound to indemnify him..... *ib.*

4. The absence or insufficiency of consideration, may be opposed to the creditor, but not to the surety, *who has paid, or is liable* to pay, especially when he is ignorant of such defence..... *ib.*

TUTOR AND TUTRIX.

1. The widow, as tutrix of her minor children, may be removed to avert waste or dilapidation of their property, but until destitution of office, she has a right to demand the possession of her children's estate from the executor.....*Clague's Widow* vs. *Clague's Executors*, 1

2. The widow, as tutrix of the minors, who are forced heirs of the testator, may, at any time, demand and take the *seizin* of the estate from

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the testamentary executors, on offering them a sufficient sum to pay the moveable legacies .....*Clague's Widow* vs. *Clague's Executors*, 1

3. The creditor of a succession inherited by minors, under the tutorship of the administrator, cannot institute suit for the removal of the tutor for malversation in office. No one can institute this action, without being properly authorized by the Court of Probates, as required by the article 1016 of the Code of Practice.....*Thompson* vs. *Hutchiss, Tutor, etc.*, 66

WARRANTY.

1. The defendant may place the plaintiff in *duriori casu*, when he exercises a legal right resulting from the action against him. Thus the plaintiffs and defendants in an execution and judgment, may be *cited in warranty*, by the purchaser at sheriff's sale, when he is in danger of eviction.....*Guerin et al.* vs. *Bagneries*, 14

2. Where a warrantor is called in by the defendant, and the sheriff's return shows that he has not been found, it is the duty of the party calling him, to use all diligence to have him cited; or a *curator, ad hoc*, appointed to represent him, if he resides out of the state...*Zimmer* vs. *Thompson et al.*, 22

3. Warrantors need not be made parties to the appeal, when it is expressly agreed that the case shall first be tried, as between the original parties.
Beard et al. vs. *Poydras*, 82

WILL.

1. A disposition by will, in which the property of the estate is to remain in the hands of the executor until the testator's children or heirs arrive at the age of majority, cannot be distinguished from one that would authorize the executors to keep and preserve it for, and return the estate to them; and is a *fidei commissum*, or trust, which is forbidden by law.
Clague's Widow vs. *Clague's Executors*, 1

2. The testator cannot extend the period of executorship to more than a year; nor direct that the estate remain in the hands of the executors afterwards, or that they keep and preserve it for another or others, when there are forced heirs present..... *ib.*

3. A will dictated in Spanish, the native tongue of the testator, and a memorandum thereof taken down in French, by the notary, which is read to the testator; approved by him as expressing *his intentions*, and drawn up in the English language, of which the testator is ignorant, but is signed by him, the notary and witnesses, is null and void under the 1571st article of the Louisiana Code, which requires that a will should be written by the notary, *as dictated*.....*Gonzales* vs. *Gonzales*, 104

4. When a foreign will, duly authenticated and admitted to probate, in the country of the testator's domicil, is presented for registry in a parish of this state, and no dative testamentary executor is asked; and it not appearing that there are any creditors, heirs or legatees, here, and the property *is*

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moveable, the judge of probates, in such cases, is bound to admit the registry and execution of the will, without any other form than that of registry.....*State* vs. *Judge Bermudez*, 221

WITNESS.

1. The father of one of the parties, called in warranty by the defendant, is an incompetent witness to testify on behalf of the plaintiff.

Guerin et al. vs. *Bagneries*, 14

2. The declaration of a witness on his *voire dire*, touching his interest and connection with one of the parties to the suit, are entitled to greater credit than his statements to a third person, when not under oath.

Le Bret vs. *Belzons*, 93

3. An agent is a competent witness for his principal in all cases, except where suit is brought against the principal on account of the negligence of the agent.....*Nicholson, Tutor, etc.*, vs. *Patton*, 213

4. So, in an action for the recovery of a lost note, against a broker who bought it of a notary's clerk, the notary was received as a competent witness to prove that his clerk had purloined the note from his office, and sold it to the defendant, notwithstanding he was the agent with whom the note was deposited, to demand payment..... *ib.*

5. The deposition of a witness taken before a commissioner, who was twice examined and cross-examined, by the defendant, *without objection*, will not be rejected on the trial, at the instance of the latter, on the ground that the witness was incompetent to testify..... *Goldenbow* vs. *Wright*, 371

6. The competency of a witness, or his interest in the matter in controversy, may be ascertained by examining him on his *voir dire;* if the party objecting does not choose to do this, the party offering him may rebut the presumption of his incompetency by other evidence.

Denton vs. *Commercial and Rail Road Bank of Vicksburg*, 486

7. The partner of a firm, subscribed as security to an attachment bond, who was absent when the name of the firm was signed, is *prima facie*, a competent witness to testify in the case..... *ib.*